

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

MOVIE GALLERY US, LLC,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:07cv1032-MHT
)	(WO)
MARK W. GREENSHIELDS,)	
et al.,)	
)	
Defendants.)	

ORDER

The plaintiff requests that, while considering the defendants' motion for fees, costs, and expenses, the court toll the plaintiff's time for appeal pursuant to Fed. R. Civ. P. 58(e).

Fed. R. Civ. P. 58(e) provides that,

"Ordinarily the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59."

The plaintiff maintains that the court's decision on whether to grant the defendants' requested attorney fees, costs and expenses may impact whether it will appeal from the court's final opinion and judgment in favor of the defendants. Because no notice of appeal has been filed and because the defendants have filed a timely motion for attorney fees under Fed. R. Civ. P. 54(d)(2), the court has the discretion to toll the time for appeal while the Rule 54(d)(2) motion is pending.

It is therefore ORDERED that the plaintiff's motion to toll the time for appeal (doc. no. 108) is granted and that, pursuant to Fed. R. Civ. P. 58(e), the defendants' motion for fees, costs, and expenses, filed pursuant to Fed. R. Civ. P. 54(d)(2), shall have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Fed. R. Civ. P. 59.

DONE, this the 22nd day of September, 2009.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE